

REMARKS

The Office Action of April 8, 2008 has been carefully reviewed and these remarks are responsive thereto. Claims 5-17 and 22-26 have been withdrawn. Reconsideration of the application in view of the following remarks is respectfully requested. Each of the Examiner's rejections is discussed below.

Section 102

Claims 1-4 have been rejected under 35 U.S.C. § 102(b) over U.S. Patent No. 2,515,554 to Freeman ("Freeman"). This rejection is respectfully traversed.

Applicants respectfully point out that original independent claim 1, along with dependent claims 2 and 4, were rejected in this application under 35 U.S.C. § 102(b) over Freeman in the Office Action mailed on May 10, 2006. In a response filed on June 1, 2006, Applicants argued that Freeman did not disclose or make obvious that which was claimed in independent claim 1. In an Office Action mailed on August 1, 2006, the Examiner conceded that independent claim 1 was patentable over Freeman, stating that "Applicant's arguments, filed 6/1/06 with respect to the rejections(s) of claims 1-4 under Freeman and Howland have been fully considered and are persuasive." Thus, Applicants respectfully submit that the Examiner has previously indicated that independent claim 1 is allowable over claim 1, and it is believed that claim 1 is still allowable over Freeman. An indication to that effect is respectfully requested at this time.

The outstanding Office Action asserts that:

"[t]he durometer of portion 16 is considered greater than that of the second portion because portion 16 is formed of stiffening ribs which assist in preserving the smooth contour of the second portion 10. A portion which is stiffer is also harder than a stretchable rubber portion." (Page 2, paragraph 2.)

Applicants note that cap 10 of Freeman is formed of rubber, as is its stiffening rib 11 and ribs 16. In fact, the entire cap 10 of Freeman is formed of the same material. There is no

disclosure or teaching in Freeman of a first portion having a first durometer and a second portion with a second durometer. Each of cap 10, stiffening rib 11 and ribs 16 of Freeman has the same durometer, since they are formed of the same material. The fact that one portion of the cap of Freeman is thicker than another does not alter the fact that the entire cap of Freeman has the same durometer. The durometer of a material is constant; it is not changed merely by making it thicker.

Accordingly, the rejection is improper and should be withdrawn.

Section 103

Claim 18

Claim 18 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Freeman in view of U.S. Patent Publication No. 2002/0184688 to Ewing (“Ewing”). Ewing is cited as disclosing a plastic portion 22 formed from PETg. This rejection is respectfully traversed.

Ewing fails to overcome the deficiencies of Freeman noted above. Accordingly, the rejection is improper and should be withdrawn.

Claims 19 and 20

Claims 19 and 20 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Freeman in view of U.S. Patent No. 5,790,988 to Guadagnino, Jr. et al. (“Guadagnino”). Guadagnino is cited as disclosing a head covering with a silicone swimming cap. This rejection is respectfully traversed.

Guadagnino fails to overcome the deficiencies of Freeman noted above. Accordingly, the rejection is improper and should be withdrawn.

Claim 21

Claim 21 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Freeman in view of U.S. Patent No. 3,979,777 to Gregg ("Gregg"). Gregg is cited as disclosing a swimming cap with a second portion formed from latex rubber to more closely conform to the contours of a wearer's head. This rejection is respectfully traversed.

Gregg fails to overcome the deficiencies of Freeman noted above. Accordingly, the rejection is improper and should be withdrawn.

Conclusion

Pending claims 1-4 and 18-21 are believed to be in form for allowance, and an indication to that effect is respectfully requested at this time. Examination of withdrawn claims 5-17 and 22-26 is respectfully requested at this time. Please apply any charges or credits to Deposit Account No. 19-0733.

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